

# CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 053

June 27, 1958

## COMMUNITY PROPERTY AGREEMENT: NONRESIDENT SPOUSES

### Syllabus:

A postnuptial agreement between nonresident spouses to hold income earned in a community property state as community property is not binding on this state for income tax purposes. The character of the income must be determined by the law of the nonresident's domicile.

Taxpayers, husband and wife, were residents of Michigan in 1951, the year involved. In 1949, while residents of New York, taxpayers had executed a contract whereby they agreed that all income earned in a community property state should be considered community income. On their 1951 California nonresident returns they divided all California income on a community property basis. Advice is requested as to whether the agreement entitled taxpayers to divide their income and deductions on a community property basis.

The law of the state of domicile must control as to whether earnings are community property or noncommunity property. Likewise, a marital property agreement is controlled, as to validity and effect, by the law of domicile of the parties, at least where no real property is involved.

Since the taxpayers were Michigan residents in 1951 the law of Michigan is controlling and there was no community property system in effect there in 1951. Therefore, their earnings are noncommunity unless the postnuptial agreement requires a different holding. The contract was valid under Michigan law and one spouse had a right to receive one-half of the other's earnings. However, since salaries not yet earned have no attached property rights, they cannot be the subject of a present transfer of legal title. A contract such as this is no more than an assignment of future earnings giving each party an equitable right against the other and not a vested legal interest in a portion of the other's future earnings. It is the existence of the latter right which gives the income-splitting privilege to residents of community property states. To hold otherwise would give extraterritorial effect to the community property laws of California. Furthermore, a state need not extend to nonresidents the incidents of its community property laws, so nonresident taxpayers cannot force the state to accept a report of income on a community property basis, merely because they agreed between themselves that they should treat their income as community rather than according to the noncommunity property system of the state of their domicile.

Consequently, taxpayer's income should be treated as noncommunity income and the marital agreement does not affect its character.